



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 17, 1997

Mr. Richard W. Currie, Jr.
Attorney at Law
513 North Church Street
Palestine, Texas 75801

OR97-0095

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103048.

The City of Palestine (the "city"), which you represent, received a request for copies of resignation letters submitted to the city by employees over the last three years. You contend that section 552.102 of the Government Code excepts the letters from disclosure. You also believe that, because the letters are maintained in civil service personnel files, section 143.089(f) of the Local Government Code prohibits the city from releasing the letters without first obtaining the employees' written permission. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we recognize that the request for copies of the resignation letters is signed "Mr. James Westley, Mayor Pro-Tem." It is unclear whether this individual is requesting the information in his official capacity or as a member of the general public. We note that when a government official, acting in his official capacity, requests access to information in the governmental body's possession, the Open Records Act does not control the government official's right of access to the information. Attorney General Opinion JM-119 (1983). For purposes of this ruling, we assume that you consider Mr. Westley's request for information to be a request from a member of the general public.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Having reviewed the resignation letters, we find that they do not contain highly intimate and embarrassing information, and that there is a legitimate public interest in the letters. Therefore, the letters are not excepted from disclosure under section 552.102 of the Government Code.

We note, however, that the letters do contain information that is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from disclosure:

Information . . . that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

In accordance with section 552.117(2), the city must withhold from disclosure peace officers' home addresses and telephone numbers, social security numbers, and any information that reveals whether the officers have family members. Pursuant to section 552.117(1), the city must also withhold this information for any current or former official or employee who, before the request for the resignation letters was received, requested under section 552.024 that this information be kept confidential.

Section 143.089(f) of the Local Government Code provides as follows:

The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

In Open Records Decision No. 562 (1990), we concluded that section 143.089 does not make information contained in personnel files maintained by civil service departments confidential for

purposes of the Open Records Act. *Id.* at 11. Specifically referring to subsection (f) of section 143.089, we said the following:

We construe subsection (f) to prohibit disclosure of personnel file information only in situations not governed by the Open Records Act or other laws that require disclosure. For example, there may be occasions where particular information in a personnel file would be excepted from disclosure under the Open Records Act, but the custodian of the records may wish to waive the exception and make such information public. In such instances, section 143.089 would require the officer to give his written consent to disclosure of the information before its release.

Id. at 6. The resignation letters appear to be maintained in civil service files. However, we conclude that, with the exception of the information that is protected under section 552.117 of the Government Code as discussed above, the Open Records Act requires the city to release the letters to the requestor because the exception that you have claimed does not exempt the letters from required public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 103048

Enclosures: Submitted documents

cc: Mr. James Westley
Mayor Pro-Tem
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(w/o enclosures)